

DENTONS US LLP
MICHAEL J. DUVALL (SBN 276994)
michael.duvall@dentons.com
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: 213-623-9300 / Fax: 213-623-9924

**Attorneys for Defendant
METROPOLITAN LIFE INSURANCE
COMPANY**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

BARBARA MCHUGH, CHARLES
PATRICK MCHUGH, JOHN
ELLSWORTH, and all others similarly
situated Plaintiffs,

V.

METROPOLITAN LIFE INSURANCE
COMPANY, a New York Corporation;

Defendant.

Case No.

**METROPOLITAN LIFE
INSURANCE COMPANY'S
NOTICE OF REMOVAL OF
CIVIL ACTION TO THE
UNITED STATES DISTRICT
COURT PURSUANT TO 28
U.S.C. §§ 1332, 1441, 1446, AND
1453**

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
2 DISTRICT OF CALIFORNIA AND TO ALL PARTIES AND THEIR
3 ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that Defendant Metropolitan Life Insurance
5 Company (“MLIC”) hereby removes the below-referenced action from the Superior
6 Court of the State of California, County of Los Angeles, to the United States District
7 Court for the Central District of California, Western Division.

8 The removal is pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453,
9 specifically on the following grounds:

10 **PLEADINGS, PROCESS AND ORDERS**

11 1. On or about July 6, 2022, Plaintiffs Barbara McHugh, Charles Patrick
12 McHugh, and John Ellsworth filed a Complaint against Defendant MLIC, alleging
13 claims, on behalf of a putative class, for common law fraud, fraudulent concealment,
14 violation of Unfair Competition Law (California Business & Professions Code §
15 17200 *et seq.*), and breach of implied covenant of good faith and fair dealing.

16 2. Plaintiffs’ allegations concern the pricing of certain MLIC long-term
17 care insurance policies. (Compl. ¶ 1.) Specifically, Plaintiffs allege that MLIC made
18 representations with respect to the “5% Automatic Compound Inflation Protection
19 Rider” and “5% Automatic Simple Benefit Increase Rider” it offered in connection
20 with long term care insurance policies that “falsely and misleadingly” promised
21 policyholders that their “premium is not expected to increase as a result of the benefit
22 amount increases provided by this Rider.” Plaintiffs allege that their and the putative
23 class’s premiums were increased as a result of the increased benefits the Riders
24 provided contrary to Plaintiffs’ characterizations of the representations made by
25 MLIC. (Compl. ¶¶ 2, 3, 6.) Plaintiffs seek compensatory, general, statutory,
26 consequential, exemplary and/or punitive damages, and attorney fees. (*Id.* ¶ 59.)

27 3. Plaintiffs seek to represent a class defined as follows:

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 All persons in the State of California who purchased an individual long-
 2 term care insurance policy containing an Inflation Protection Rider
 3 from MLIC (or a subsidiary or affiliate thereof) at any time during the
 4 period from January 1, 1986 to the present and have been subjected to
 5 a class-wide rate increase that increased their base premium and the
 6 premium/charge paid for the Inflation Protection Riders.

7 (Compl. ¶ 61.)

8 4. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of Plaintiffs'
 9 Complaint and all process and pleadings served on MLIC in the state court action are
 10 attached collectively as **Exhibit A**.

11 **TIMELINESS OF REMOVAL**

12 5. Plaintiffs served the Complaint on MLIC on August 22, 2022.

13 6. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed
 14 within thirty (30) days of MLIC's receipt of Plaintiffs' Complaint. MLIC has
 15 provided notice of the filing of this Notice of Removal to Plaintiffs by service of a
 16 copy of this Notice of Removal, as required by 28 U.S.C. § 1446(d). A true and
 17 correct copy of this Notice of Removal, along with a Notice of that filing, also will
 18 be filed with the Clerk of Court for Los Angeles County, California in accordance
 19 with 28 U.S.C. § 1446(d).

20 **VENUE IS PROPER**

21 7. Venue is proper under 28 U.S.C. § 1441(a) because the United States
 22 District Court, Central District of California, Western Division, embraces the County
 23 and Court in which Plaintiffs filed this action, the Superior Court for the State of
 24 California, County of Los Angeles.

25 **JURISDICTION**

26 8. This Court has original jurisdiction of this action under the Class Action
 27 Fairness Act ("CAFA"). *See* 28 U.S.C. § 1332(d)(2). Specifically, removal is
 28 appropriate under 28 U.S.C. §§ 1453 and 1446 because this action: (i) involves 100
 or more putative class members; (ii) at least one putative class member is a citizen of

1 a State different from that of MLIC; and (iii) the amount in controversy more likely
 2 than not exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. §§
 3 1332(d)(2) & (6).

4 **A. The Putative Class Consists of at Least 100 Members**

5 9. CAFA requires that the putative class consist of at least 100 members.
 6 28 U.S.C. §1332(d)(6).

7 10. Plaintiffs claim to bring this action on behalf of “all persons within the
 8 State of California” who purchased long term care insurance from MLIC containing
 9 an “Inflation Protection Rider” from January 1, 1986 to the present. (Compl. ¶ 61.)
 10 Plaintiffs assert that there are “over four thousand Class members.” (*Id.* ¶ 62.) The
 11 Complaint also asserts that the members of the class “are so numerous that joinder of
 12 all members is impracticable.” (*Id.*)

13 11. Accordingly, this case is properly removed under 28 U.S.C. §§ 1332 and
 14 1441.

15 **B. The Parties are Sufficiently Diverse**

16 12. CAFA requires minimal diversity for the purposes of establishing
 17 federal jurisdiction; at least one purported class member must be a citizen of a State
 18 different from any named defendant. 28 U.S.C. § 1332(d)(2)(A).

19 13. For diversity purposes, “a corporation shall be deemed to be a citizen of
 20 every State and foreign state by which it has been incorporated and of the State or
 21 foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

22 14. For diversity purposes, a person is a “citizen” of the state in which he or
 23 she is domiciled. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

24 15. As alleged in the Complaint, Plaintiffs are natural persons and citizens
 25 of California. (Compl. ¶¶ 9-11.)

26 16. As alleged in the Complaint, MLIC is and was, at the time of the filing
 27 of the Complaint and the filing of this removal, incorporated in New York, with its
 28 principal place of business in New York. (Compl. ¶ 1.) Therefore, MLIC is a New

1 York citizen for diversity purposes.

2 17. As Plaintiffs are California citizens and MLIC is a citizen of New York,
 3 the parties are diverse under CAFA.

4 **C. The Amount in Controversy Meets the CAFA Threshold**

5 18. Under CAFA, “district courts shall have original jurisdiction of any civil
 6 action in which the matter in controversy exceeds the sum or value of \$5,000,000,
 7 exclusive of interests and costs.” 28 U.S.C. § 1332(d)(2). The claims of the
 8 individual members in a class action are aggregated to determine if the amount in
 9 controversy exceeds the \$5,000,000 threshold. *Id.* § 1332(d)(6).

10 19. Based on Plaintiffs’ Complaint, MLIC has a reasonable, good faith
 11 belief that the amount in controversy exceeds \$5,000,000 because Plaintiffs seek
 12 compensatory, general, consequential, exemplary and/or punitive damages, and
 13 attorney fees that together exceed the jurisdictional minimum. Plaintiffs specifically
 14 allege that MLIC “collected tens or even hundreds of millions of dollars in
 15 unwarranted premiums.” (Compl. ¶ 59.) While a more precise amount is not alleged,
 16 this allegation relating to alleged compensatory damages, together with the other
 17 categories of damages Plaintiffs seek and the purported applicable time period (1986
 18 to present), sufficiently establishes that the amount in controversy requirement is met.

19 20. It is well-settled that in determining whether a complaint meets the
 20 amount in controversy threshold of 28 U.S.C. § 1332(a), a court should consider the
 21 aggregate value of claims for all categories of claimed damages (including punitive
 22 damages). *See, e.g., Bell v. Preferred Life Assurance Soc'y*, 320 U.S. 238, 241 (1943)
 23 (amount in controversy requirement met if plaintiff “might recover” award of
 24 compensatory and punitive damages in excess of amount in controversy
 25 requirement); *Simmons v. PCR Tech.*, 209 F.Supp.2d 1029, 1031-32 (N.D. Cal. 2002)
 26 (aggregating claims for compensatory damages, punitive damages and attorney fees
 27 in determining amount in controversy); *Abikhalil v. Am. Med. Response Ambulance*

DENTONS US LLP
 601 SOUTH FIGUEROA STREET, SUITE 2500
 LOS ANGELES, CALIFORNIA 90017-5704
 (213) 623-9304

Serv., 2016 WL 429764, at *2 (C.D. Cal. Feb. 6, 2016) (it is “well established that punitive damages are part of the amount in controversy in a civil action”).

21. Accordingly, Plaintiffs' claimed compensatory, general, consequential, exemplary and/or punitive damages, and attorney fees, exceed the jurisdictional threshold amount of \$5,000,000, for the purposes of removal under CAFA.

NOTICE TO PLAINTIFF AND SUPERIOR COURT

22. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Central District of California, and pursuant to 28 U.S.C. § 1446(d), written notice of this filing and any attendant supplementary papers required by this Court will be provided to Plaintiffs, and a copy of the Notice of Removal will be filed with the Clerk of the Court for the Superior Court of the State of California, County of Los Angeles.

RESERVATION OF RIGHTS

23. MLIC, by filing this Notice of Removal, does not waive any defenses or objections available to it under the law. MLIC reserves the right to amend or supplement this Notice of Removal.

Dated: August 30, 2022

DENTONS US LLP

By: /s/ Michael J. Duvall
Michael J. Duvall

Atorneys for Defendant
**METROPOLITAN LIFE INSURANCE
COMPANY**

1
2 **PROOF OF SERVICE**
3

4 I am employed in the County of Los Angeles, State of California, I am over
 5 the age of 18 and not a party to the within action. My business address is: 601 S.
 6 Figueroa Street, Suite 2500, Los Angeles, CA 90017.
 7

8 On August 30, 2022, I served the foregoing document, described
 9 **METROPOLITAN LIFE INSURANCE COMPANY'S NOTICE OF**
 10 **REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT**
 11 **COURT PURSUANT TO 28 U.S.C. §§ 1332, 1441, 1446 AND 1453** as on the
 12 interested parties in this action, as follows:

13 THOMAS C. CRONIN (SBN 200754)
 14 CRONIN & CO., LTD.
 15 120 LaSalle Street, 20th Floor
 16 Chicago, Illinois 60602
 17 Telephone: 312-500-2100
 18 Email: tcc@cronincoltd.com

19 ROBERT R. DUNCAN (PRO HAC VICE FORTHWITH)
 20 JAMES PODOLNY (PRO HAC VICE FORTHWITH)
 21 DUNCAN LAW GROUP, LLC
 22 161 North Clark St, Suite 2550
 23 Chicago, Illinois 60601
 24 Telephone: 312-818-4415
 25 Email: rrd@duncanlawgroup.com
 26 Email: jp@duncanlawgroup.com

27 STEVEN MIKUZIS (PRO HAC VICE FORTHWITH)
 28 MAG MILE LAW, LLC
 29 535 North Michigan Ave., Suite 200
 30 Chicago, Illinois 60611
 31 Telephone: 708-576-1624
 32 Email: steven@magmailelaw.com

33 MATTHEW P. KELLY (SBN 224297)
 34 THE LAW OFFICE OF MATTHEW P. KELLY
 35 4652 Glenalbyn Drive
 36 Los Angeles, CA 90065
 37 Telephone: 310-483-3608
 38 Email: mpk@matthewpkellylaw.com

39 **(VIA U.S. MAIL)** I placed a true copy of the foregoing document in an
 40 envelope addressed to each interested party as set forth above. I sealed each such
 41 envelope, and placed same, with postage thereon fully prepaid, for collection and
 42 mailing at Dentons US LLP, Los Angeles, California 90017. I am readily familiar
 43 with Dentons US LLP's practice for collection and processing of correspondence
 44 for mailing with the United States Postal Service. Under that practice, the
 45 correspondence would be deposited in the United States Postal Service on that same
 46 day in the ordinary course of business.

1 **(VIA PERSONAL SERVICE)** I served a true copy of the within
2 document on the interested parties in this action by personally hand delivering a
copy of said document to the addressee listed on this proof.

3 **(VIA FEDERAL EXPRESS)** I deposited in a box or other facility
4 maintained by Federal Express, an express carrier service, or delivered to a courier
or driver authorized by said express carrier service to receive documents, a true
5 copy of the foregoing document, in an envelope designated by said express service
carrier, with delivery fees paid or provided for.

6 **(VIA FACSIMILE)** I caused a true copy of the foregoing document to
7 be served by facsimile transmission to each interested party at the respective
facsimile numbers listed. A transmission report was properly issued by the sending
8 facsimile machine for each interested party served.

9 **(VIA ECF/CM ELECTRONIC MAIL)** I transmitted the above
document(s) by ECF/CM electronic mail to the interested parties via the court's
website.

10 I declare that I am employed in the office of a member of the bar of this
11 Court at whose direction the service was made. OR I declare that I have been
12 retained by a member of the bar of this Court at whose direction this service was
made.

13 I declare under penalty of perjury that the foregoing is true and correct.
14 Executed on August 30, 2022, at Los Angeles, California.

15 _____
16 */s Frederick A.B. Kalve*
17 _____
18 *Frederick A.B. Kalve*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300